

General Teamsters Local Union No. 528, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America and National Homes Corporation and Southern Council of Industrial Workers, United Brotherhood of Carpenters and Joiners of America, AFL-CIO, Acting on Behalf of Millmen's Local Union No. 1528, United Brotherhood of Carpenters and Joiners of America, AFL-CIO. Case 10-CD-271

March 24, 1981

DECISION AND ORDER

Upon a charge filed on March 27, 1978, by Southern Council of Industrial Workers, United Brotherhood of Carpenters and Joiners of America, AFL-CIO, acting on behalf of Millmen's Local Union No. 1528, United Brotherhood of Carpenters and Joiners of America, AFL-CIO, and duly served on General Teamsters Local Union No. 528, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, herein Respondent, the General Counsel of the National Labor Relations Board, by the Regional Director for Region 10, issued a complaint and notice of hearing, an amendment to complaint, and an amended complaint and notice of hearing dated respectively January 9, 1979, January 22, 1979, and March 12, 1980, against Respondent, alleging that Respondent had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8(b)(4)(D) and Section 2(6) and (7) of the National Labor Relations Act, as amended. Copies of the charge, complaint, notice of hearing, amended complaint, and amended notice of hearing were duly served on the parties to this proceeding.

With respect to the unfair labor practices, the amended complaint¹ alleges in substance that on or about March 13, 1978, Respondent violated Section 8(b)(4)(ii)(D) of the Act by threatening to strike National Homes Corporation, herein the Employer, if the service and maintenance work, including gas and oil service of forklifts and straddlers, used by the Employer, at its Thomson, Georgia, manufacturing facility, was not assigned to employees who are represented by Respondent. The complaint also alleges that the object of this conduct is and has been to force or require the Employer to assign the work to employees who are represented by Respondent. The complaint further alleges that Respondent failed and refused to abide by the Board's Decision and Determination of Dispute² in the un-

derlying 10(k) proceeding which awarded the disputed work to employees represented by Millmen's Local No. 1528, affiliated with the United Brotherhood of Carpenters and Joiners of America, AFL-CIO, herein the Union, and has continued to demand that the Employer assign the disputed work to employees who are represented by Respondent. Respondent filed its answer to the complaint and answers to the amended complaints on January 12, 1979, February 6, 1979, and March 24, 1980, respectively, admitting in part, and denying in part, the allegations in the complaint.

On June 16, 1980, the parties entered into a stipulation and moved to transfer the proceeding to the Board. The parties agreed that the stipulation, along with the charge, notice of charge filed, transcript of the 10(k) hearing, the Board's Decision and Determination of Dispute in *General Teamsters Local Union No. 528, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (National Homes Corporation)*, 239 NLRB 370 (1978), complaint and notice of hearing, amendment to complaint, amended complaint and notice of hearing, Respondent's respective answers to the complaint, amendment to complaint and amended complaint, motion to transfer case and continue proceeding before the Board and for Summary Judgment, order transferring the proceeding to the Board and Notice To Show Cause, Respondent's brief in opposition to Motion for Summary Judgment, order denying Motion for Summary Judgment, notice of hearing, orders rescheduling hearing, and order postponing hearing indefinitely constitute the entire record in this case, and that no oral testimony is necessary or desired by any of the parties. They waived a hearing, the making of findings of fact and conclusions of law, and the issuance of an administrative law judge's decision, and submitted the case for findings of fact, conclusions of law, and an appropriate order directly to the Board.

On September 24, 1980, the Board approved the stipulation, made it a part of the record, and transferred to and continued the proceeding before the Board for the purpose of making findings of fact and conclusions of law for the issuance of a decision and order. Thereafter, Respondent filed a brief.

The Board has considered the stipulation, the briefs, and the entire record, and hereby makes the following:

¹ All references to the complaint are references to the complaint as amended.

² 239 NLRB 370 (1978).

FINDINGS OF FACTS

I. JURISDICTION

The Employer is a corporation duly organized under and existing by virtue of the laws of the State of Indiana, with an office and place of business in Thomson, Georgia, where it is engaged in the manufacture and sale of prefabricated homes. Annually, the Employer, in the course and conduct of its business operations, sells and ships goods valued in excess of \$50,000 directly to customers located outside the State of Indiana.

The parties stipulated, and we find, that the Employer is engaged in commerce and in operations affecting commerce as defined in Section 2(6) and (7) of the Act. We also find that it will effectuate the purposes of the Act to assert jurisdiction herein.

II. THE LABOR ORGANIZATIONS

The parties stipulated, and we find, that General Teamsters Local Union No. 528, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America and Millmen's Local Union No. 1528, United Brotherhood of Carpenters and Joiners of America, AFL-CIO, are labor organizations within the meaning of Section 2(5) of the Act.

III. THE UNFAIR LABOR PRACTICES

A. Facts

The parties stipulation shows these facts:

On or about May 31, 1977, Respondent, pursuant to its collective-bargaining agreement with the Employer, filed a grievance concerning the Employer's reassignment of service and maintenance work, including gas and oil service of forklifts and straddlers, from Respondent to the Union. On or about January 25, 1978, Respondent's Southern Multi-State Grievance Committee awarded the work described above to employees represented by Respondent. The Union, at no time material herein, has participated in, or has been bound by this grievance award. On or about March 13, 1978, Respondent sent to the Employer a letter stating, *inter alia*, that the Employer's refusal to abide by the grievance award would leave Respondent "no choice except to establish a picket line on your facility."

On November 20, 1978, after conducting a hearing pursuant to Section 10(k) of the Act, the Board issued its Decision and Determination of Dispute in which it concluded that the employees of National Homes Corporation who were represented by the Union were entitled to perform the work in dis-

pute; i.e., service and maintenance work, including gas and oil service of forklifts and straddlers, at the Employer's Thomson, Georgia, facility. The Board also found, *inter alia*, that Respondent was not entitled to force or require National Homes Corporation to assign the work to employees it represented by means proscribed by Section 8(b)(4)(D) of the Act. The decision further directed Respondent to notify the Regional Director for Region 10, in writing, within 10 days, whether it would refrain from the proscribed action. Respondent has failed and refused to comply with the Board's Decision and Determination. Respondent has not, at any time material herein, notified the Regional Director for Region 10, in writing, whether or not it would refrain from forcing or requiring the Employer, by means proscribed by Section 8(b)(4)(D) of the Act, to assign the disputed work in a manner consistent with the Board's Decision and Determination of Dispute in the 10(k) proceeding.

B. Discussion

Respondent, in its brief, asserts that the Board's 10(k) determination was erroneous, that the work in dispute should have been assigned to employees whom it represents, and that its collective-bargaining agreement requires that it be awarded the work. We find no merit to Respondent's contentions and they raise arguments all previously considered by the Board.³

Respondent further contends that it complied with the Board's 10(k) determination because it never engaged in any picket or strike action against the Employer, and therefore the instant complaint should be dismissed. We agree with Respondent that compliance with a Board determination in a 10(k) proceeding constitutes a defense to conduct allegedly violative of Section 8(b)(4)(i) and (ii)(D) of the Act. Respondent's defense, however, fails in that merely refraining from engaging in picket or strike action is not sufficient to constitute compliance with a 10(k) determination and justify dismissal of a complaint alleging conduct violative of Section 8(b)(4)(D). Rather, in order for the defense of compliance with a 10(k) proceeding to be successful in justifying the dismissal of a complaint arising under Section 8(b)(4)(D), there must be actual performance of the requirements set forth in the Board's 10(k) determination. *Local 595, International Association of Bridge, Structural and Ornamental Iron Workers, A.F.L., et al. (Bechtel Corporation)*, 112 NLRB 812 (1955).

³ See *Local 445, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (Blount Brothers Corporation)*, 197 NLRB 46 (1972), and cases cited therein at fn. 5.

In the instant case, Respondent stipulated that on March 13, 1978, it forwarded a letter to the Employer threatening to strike if the Employer refused to abide by the grievance award and assign the disputed work to employees represented by Respondent. The record contains no evidence indicating that Respondent has countermanded, revoked, withdrawn, recalled, or canceled its demand for the disputed work or notified the Employer that its demand is no longer in effect and will not be reasserted or advanced to obtain the disputed work. Therefore, since a threat to strike was made by Respondent and has never been withdrawn either through compliance with the Board's 10(k) determination or in any other manner, we find that the threat is currently outstanding.

Having determined that Respondent has not complied with the Board's 10(k) determination, the merits of the complaint concerning whether Respondent has engaged in conduct violative of Section 8(b)(4)(D) of the Act must be examined. At this juncture, it should be noted that Respondent's failure to comply with the Board's 10(k) determination does not, *per se*, constitute a violation of Section 8(b)(4)(D). Rather, noncompliance merely triggers a complaint alleging that a violation of Section 8(b)(4)(D) has occurred. Once the complaint has issued, "in the Section 8(b)(4)(D) proceeding itself, the Board must find by a preponderance of the evidence that the picketing union has violated Section 8(b)(4)(D)." *N.L.R.B. v. Plasterers Local No. 79, Operative Plasterers' & Cement Masons' International Assn., AFL-CIO, et al.*, 404 U.S. 116, 122, fn. 10 (1971). All the factors essential for a finding of such a violation are present in the instant case: As set forth above, Respondent threatened to picket the Employer and that threat is currently outstanding; by such conduct, Respondent threatened to induce and encourage the employees of the Employer to engage in a concerted refusal to perform services for the Employer; its object was to force the Employer to assign the service and maintenance work, including gas and oil service of forklifts and straddlers, to members of Respondent rather than to nonmembers or to members of the Union; and the Employer was not failing to conform to any order or certification of the Board determining the bargaining representative for the employees performing the work in dispute. Accordingly, on the basis of the foregoing and the entire record in this proceeding, we find by a preponderance of the evidence that Respondent violated Section 8(b)(4)(ii)(D) of the Act.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICE UPON COMMERCE

The conduct of Respondent as set forth above, occurring in connection with the Employer's operations, has a close, intimate, and substantial relationship to trade, traffic, and commerce among the several States and tends to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. THE REMEDY

Having found that Respondent has engaged in and is engaging in certain unfair labor practices, we shall order it to cease and desist therefrom and take affirmative actions designed to effectuate the purposes of the Act.

CONCLUSIONS OF LAW

1. National Homes Corporation is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. Respondent General Teamsters Local Union No. 528, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, is a labor organization within the meaning of Section 2(5) of the Act.

3. By threatening to strike National Homes Corporation, the object of which was to force or require National Homes Corporation to assign to employees represented by Respondent, rather than to employees represented by the Union, the service and maintenance work, including gas and oil service of forklifts and straddlers, at the Employer's Thomson, Georgia, facility, the employees Respondent represents not being lawfully entitled to that work, Respondent has engaged in unfair labor practices within the meaning of Section 8(b)(4)(ii)(D) of the Act.

4. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, General Teamsters Local Union No. 528, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Thomson, Georgia, its officers, agents, and representatives, shall:

1. Cease and desist from threatening to strike National Homes Corporation, the object of which is to force or require National Homes Corporation to assign the service and maintenance work, including

gas and oil service of forklifts and straddlers at the Employer's Thomson, Georgia, facility, to employees represented by Respondent rather than to employees represented by Millmen's Local Union No. 1528, United Brotherhood of Carpenters and Joiners of America, AFL-CIO, except insofar as such conduct is permitted under Section 8(b)(4)(ii)(D) of the Act.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Post at its offices and meeting halls copies of the attached notice marked "Appendix."⁴ Copies of said notice, on forms provided by the Regional Director for Region 10, after being duly signed by Respondent's representative, shall be posted by Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to members are customarily posted. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(b) Sign and mail sufficient copies of said notice to the Regional Director for Region 10 for posting by National Homes Corporation, if it is willing, at all locations upon the premises where notices to its employees are customarily posted.

(c) Notify the Regional Director for Region 10, in writing, within 20 days from the date of this

Order, what steps the Respondent has taken to comply herewith.

APPENDIX

NOTICE TO MEMBERS POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD An Agency of the United States Government

To all members of General Teamsters Local Union No. 528, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America:

WE WILL NOT threaten to strike National Homes Corporation, the object of which is to force or require National Homes Corporation to assign employees represented by General Teamsters Local Union No. 528, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, rather than to employees of National Homes Corporation represented by Millmen's Local No. 1528, United Brotherhood of Carpenters and Joiners of America, AFL-CIO, the service and maintenance work including gas and oil service of forklifts and straddlers at the Employer's Thomson, Georgia, facility except insofar as such conduct is permitted under Section 8(b)(4)(D) of the Act.

⁴ In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

GENERAL TEAMSTERS LOCAL UNION
NO. 528, AFFILIATED WITH INTERNATIONAL BROTHERHOOD OF TEAMSTERS,
CHAUFFEURS, WAREHOUSEMEN AND
HELPERS OF AMERICA